IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Appn. No. 504 of 2005

Sardar Gulab Singh S/o Sardar Bhag Singh
R/o Village Ajitpur, Shahbad Road,
District Rampur. U.P.

…… Applicant

Versus

1. State of Uttaranchal
   through Chief Secretary
   Govt. of Uttaranchal, Dehradun.
2. Judicial Magistrate Ist Class,
   Kashipur, Distt. Udham Singh Nagar.
3. Sessions Judge, Udham Singh Nagar.
4. Sardar Madho Singh
   S/o late Thamman Singh,
   R/o Jaspur Khurd, P.S. Kashipur,
   District Udham Singh Nagar.

…… Respondents

Mr. Jagdish Prasad, Advocate for the applicant.
Mr. Vipul Sharma, Advocate for respondent No. 4.
Mr. Ajay Bhatt, A.G.A. for the State.

Hon. Prafulla C. Pant, J.

Heard learned counsel for the parties.

2. By means of this petition moved under Section 482 of the Code of Criminal Procedure, 1973, the applicant / petitioner has sought quashing of the order dated 03.06.2005, passed in Criminal Complaint Case No. 756 of 2005; Sardar Madho Singh Vs. Sardar Gulab Singh and another. By said order (Annexure -6 to the petition) the learned Judicial Magistrate, Kashipur has summoned the applicant Sardar Gulab Singh under Section 204 of Cr.P.C. for his trial with regard to the offence allegedly committed by him punishable under Section 138 of the Negotiable Instrument Act, 1881.

3. Learned counsel for the applicant argued that no notice, as required under Clause (b) of proviso to Section 138 of the Negotiable Instrument Act, 1881, was ever served by the complainant to the applicant Sardar Gulab Singh. As such, the impugned proceedings against the applicant cannot be maintained.

4) Learned counsel for the respondent (complainant) conceded fairly that notice was not served on the applicant, as required under aforesaid Clause (b) of proviso to Section 138.

5) In the above circumstances, this Court has no hesitation in holding that as against applicant Sardar Gulab Singh, the order summoning him for his trail in respect of the offence punishable under Section 138 of the Negotiable Instrument Act, 1881, is liable to be quashed, Accordingly, the impugned order dated 03.06.2005, is quashed, to the extent accused Sardar Gulab Sigh has been summoned for his trial in respect of said offence i.e. under Section 138 of the Negotiable Instrument Act, 1881. However, this Court leaves it open for the trial court for considering the evidence recorded under Section 200 and 202 of Cr.P.C., in respect of the other offences punishable under Section 406 and 420 of I.P.C., allegedly committed by the applicant. This order would not affect the proceedings against the accused Sant Kumar Sharma, who has also been summoned by said order and to whom notice was allegedly served by the complainant.

6) With these directions, this Petition moved under Section 482 of the Code of Criminal Procedure, 1973, stands disposed of. (The Stay Vacation Application No. 1095 of 2005 also stands disposed of).

(Prafulla C. Pant, J.)

Dt. 11th September, 2006.
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